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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 3871 of 2005
Date of decision: 20.9.2007

Davinder Kumar

.....Petitioner

Versus

Ram Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Aman Bahri, Advocate for the petitioner.

Mr. Amit Jain, Advocate for the respondents

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RAJESH BINDAL, J.

The petitioner/tenant has approached this Court by filing the revision petition against the concurrent findings of fact by both the Courts below whereby his eviction had been ordered on account of building having become unfit and unsafe for human habitation.

2. Both the Courts below found that building being old had outlived its life, the eviction of the petitioner/tenant was justified in law. It has come on record that the building situated in Manimajra town is about 70-80 years old. The roof was made of wooden Ballas. There were holes in the roof, which leaked during the rainy season. Infact roof had been given support.

3. Learned counsel appearing for the petitioner/tenant submitted that the respondents/landlord having not stated in the eviction petition filed by him that the building, which had become unfit and unsafe was required by him for reconstruction and giving back to the tenant, accordingly, the petition was lacking basic particulars and as such is required to be dismissed. He relied upon the judgment of Hon'ble the Supreme Court in

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Shadi Singh Vs. Rakha (1992) 3 Supreme Court Case 55. He further submitted that evidence of expert, who was not qualified in the subject could not be relied upon to hold that building had outlived its life. Similar is the position with regard to Local Commissioner, who though was appointed in another case filed by the petitioner/tenant regarding the same building. Summing up his arguments, he submitted that infact building was not unfit and unsafe rather the same is in fit condition and petitioner is still continuing his business in the same premises. Even the respondents/landlords are also living on the Ist floor thereof, which itself shows that building had not outlived its life.

4. On the other hand, learned counsel appearing for the respondents/landlord submitted that in view of two judgments of Hon'ble the Supreme Court in Shadi Singh's case (supra) and **Wazir Chand Vs. Swaran Kar Sabha 1990 (2) PLR 173** taking contrary view, the matter was considered by a Division Bench of this Court in **Ram Sarup Vs. Din Dayal 1996 (2)PLR 770**, wherein it was opined that view expressed by Hon'ble the Supreme Court in Wazir Chand's case (supra) is the view, which should be followed for interpreting Section 13 (4) of the East Punjab Urban Rent Restriction Act, 1949 (for short "the Punjab Act"). The judgment in Ram Sarup's case (supra) was further followed by this Court in **Vishwa Mittar and others Vs. Manohar Lal Makkar 2004 (3) Punjab Law Reporter 452.**

5. Learned counsel for the respondents/landlords further submitted that as far as report of the expert is concerned, he was not appointed by the respondents/landlords rather in an FIR lodged by the petitioner against the respondents, the police got the status of the building assessed by the person, who had sufficient experience in the field and merely because he was not qualified, his evidence could not be discarded. Still further as regards the report of the Local Commissioner is concerned, the same also was a result of appointment made by the Court in a suit filed by the petitioner, where on his prayer, the Local Commissioner was appointed and when the Local Commissioner after visiting the spot, opined against the petitioner, the suit was not pressed. Accordingly, he prayed for

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dismissal of the petition being meritless.

6. After hearing learned counsel for the parties, I find merit in the contentions raised by learned counsel appearing for the respondents/landlords. As far as the plea raised by the petitioner-tenant regarding non mentioning of fact that the building, which had become unfit and unsafe for human habitation, was required by the respondents/landlords for reconstruction and for giving back to the petitioner/tenant, I find that there being a contrary view of Hon'ble the Supreme Court in Shadi Singh's and Wazir Singh's case (supra), the matter was considered by a Division ench of this Court in Ram Sarup's case (supra), which was further followed in Vishwa Mittar and others' case (supra), wherein it was held as under:-

> "13. Having heard the learned counsel at a considerable length, I am of the view that the judgment of the Supreme Court in Shadi Singh's case (supra) is not an authority for the proposition that after obtaining possession of the building on rent under Section 13 (3) (a) (iii) of the Act, the landlord is required to construct a new building after demolishing the old structure and restore its possession of the tenant. The word 'required' used in the section has to be read independently of the expression 'unfit and unsafe for human habitation'. The aforementioned view has been formulated by a Division Bench in Ram Sarup's case (supra) constituted after the judgment in Shadi Singh's case (supra) was delivered by the Supreme Court. The afore-mentioned view is discernible from paragraph 22 of the judgment of the Division Bench which reads as under:-
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> > "On the basis of above, we hold that the decision in Shadi Singh's case does not lay down a proposition of law that after obtaining possession of the building or land under Section 13 (3)(a) (iii) of the Punjab Act or Section 13 (3) (c) of the Haryana Act, the landlord should construct a new

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building after demolishing the old structure and restore its possession to the tenant. We hold that the judgment of the Supreme Court in Wazir Chand Vs. Swarankar Sabha (supra) lays down the correct law and it should be followed for interpreting Section 13 (4) of the Punjab Act and Section 13 (6) of the Haryana Act. We also hold that the tenant is not entitled to restoration of possession under Section 13 (4) of the Punjab Act or Section 13 (6) of the Haryana Act where the landlord obtains possession of a tenanted building or land under Section 13 (3) (a) (iii) of the Punjab Act or Section 13 (3) (c) of the Haryana Act and constructs a new building after demolition of the old structure." (emphasis added).

14. On the basis of statutory interpretation and precedents, it cannot be concluded that the landlord-respondent was required to plea that the building has become unfit and unsafe for human habitation which is required by him to carry out any building work at the instance of Government or local authority or any Improvement Trust under some improvement or development scheme. Therefore, the statement made by learned counsel for the landlord-respondent that the interpretation given to Section 134 (3) (a) (iii) of the Act by a Full Bench of this Court in Lalit Bihari's case (supra) would govern the issue and deserves to be accepted. If the facts of the present case are examined in the light of the law laid down by the Division Bench in Ram Sarup's case (supra), then no doubt is left that the landlord-respondent has pleaded all the necessary ingredients to succeed in ejecting the tenant-petitioner on the ground of the building having become unfit and unsafe for human

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habitation."

7. A perusal of the above extracted passages from the judgment of this Court in Vishwa Mittar's case (supra), shows that landlord is not required to plead or to undertake for restoring the premises back to the tenant after reconstruction. Accordingly, I do not find any merit in this contention of the learned counsel appearing for the petitioner-tenant.

8. As far as the contention raised by learned counsel appearing for the petitioner-tenant regarding the building having become unfit and unsafe for human habitation is concerned, both the reports, which were relied upon by the respondent-landlord to prove that building had infact outlived its life was a result of the initiation made by the petitioner/tenant. Though Dr. Mahi Pal may not be technically qualified but because of his experience, his opinion cannot be discarded especially keeping in view the fact that he was an independent assessor from whom the police got the report regarding the status of the building in an FIR lodged by the petitioner/tenant himself. Similar is the case with regard to report of the Local Commissioner, who was also appointed in a suit filed by the petitioner, where he opined that status of the building was dilapidated. The Local Commissioner when visited the spot found that roof of the shop was made of Ballas and bricks. There were water patches/spots on the facing wall. One bala and one Shatir of wood were existing to give the support to the roof and the building was in dilapidated condition. Even regarding the Chaubara, it was opined by him that lintel of the roof of the Chaubara had also outlived its life as the iron sarias were visible.

9. As regards the claim made by the petitioner/tenant that the respondent/landlord was residing in the upper portion of the shop in dispute, it was submitted by learned counsel appearing for the respondent/landlord that they had merely stated that upper portion is in their possession and not that they were residing there. As they had only rented out ground floor, the upper portion thereof was accordingly in their possession.

10. Once it is found by both the reports that building had become unfit and unsafe for human habitation and had infact outlived its life, there is no occasion for this Court to interfere with the concurrent findings of fact

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by both the Courts below in the revisional jurisdiction without there being any material on record to hold that the view expressed by both the Courts below is perverse.

Accordingly, I do not find any merit in the petition and the same is dismissed.

September 20, 2007 **(Rajesh Bindal)**
Pka **Judge**

(Refer to Reporter)